

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35267

WILLIAM G. LIGHTNER,)	2009 Unpublished Opinion No. 673
)	
Plaintiff-Appellant,)	Filed: November 13, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
FOURTH JUDICIAL DISTRICT, ADA)	THIS IS AN UNPUBLISHED
COUNTY, et al., ADA COUNTY, et al., ADA)	OPINION AND SHALL NOT
COUNTY, et al.,)	BE CITED AS AUTHORITY
)	
Defendants-Respondents.)	
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. James F. Judd, District Judge.

Order granting summary judgment and dismissing civil rights action, affirmed.

William G. Lightner, Boise, pro se appellant.

Greg H. Bower, Ada County Prosecuting Attorney; Ray J. Chacko, Deputy Prosecuting Attorney, Boise, for respondents.

MELANSON, Judge

William G. Lightner appeals from the district court's order granting summary judgment and dismissing his civil rights action. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

In 1993, Lightner was charged with three counts of lewd conduct with a minor child under sixteen. In 1994, Lightner pled guilty to one count, and the other two counts were dismissed. The plea agreement provided that the state would not take any additional action against Lightner with regard to allegations surrounding other victims. The district court sentenced Lightner to a unified term of twenty years, with a minimum period of confinement of three years. After a period of retained jurisdiction, the district court received an extensive report from the Department of Corrections recommending that the court relinquish jurisdiction. The

district court followed that recommendation. Lightner served nine years in prison before being paroled.

Prior to Lightner's January 26, 2004, parole date, the Idaho Sexual Offender Classification Board (Board) reviewed his record and conducted an assessment as provided under the Sexual Offender Registration Notification and Community Right-to-Know Act, I.C. §§ 18-8301 *et seq.* The Board found that Lightner presented a high risk of re-offense. Therefore, the Board classified Lightner as a violent sexual predator (VSP). Some of the information used to support the VSP classification concerned allegations surrounding other victims. Lightner appealed that decision to the district court on the grounds that the calculation was incorrectly performed and the classification did not fit his case. The district court found no genuine issue of material fact and affirmed the Board's VSP classification. This Court also affirmed the classification. *See Lightner v. State*, 142 Idaho 324, 127 P.3d 227 (Ct. App. 2005).

In 2005, Lightner absconded from parole and fled the country. He was subsequently apprehended, his parole was revoked, and he was returned to the custody of the Department of Corrections to serve his full prison term. In April 2007, Lightner filed a civil rights complaint against Ada County Fourth Judicial District, Ada County Prosecutor's Office, the Ada County Public Defender's Office, and the State of Idaho. Among other things, Lightner's complaint alleged that his VSP classification constituted further action taken against him in violation of his plea agreement and that the classification had caused him harm, including the revocation of his parole. He requested complete exoneration and release from the custody of the Department of Corrections, removal of the VSP classification, \$750,000 for damages to his character, and \$100,000 damages for all unjustly accused sex offenders. The complaint also asserted that he was required to pay restitution *ex post facto*.

Subsequently, Lightner moved to add additional state defendants, including members of the Board. The district court granted the motion filed by the Office of the Attorney General to dismiss the state defendants. The district court then granted the motion filed by the Ada County Prosecutor's Office for summary judgment and dismissed Lightner's claims on the basis that the complaint was filed outside of the time provided by the applicable statute of limitation. Lightner appeals.

II. ANALYSIS

A. Summary Dismissal

Lightner makes many arguments concerning the merits of his claims that his plea agreement was breached by the “additional action” taken in classifying him as a VSP and the use of the dismissed charges by the Board in its classification.¹ However, the dispositive issue, and that addressed by the district court, is whether Lightner’s claims are barred by the statute of limitation, regardless of their merit. This Court exercises free review over the legal issues related to statutes of limitation. *See McCabe v. Craven*, 145 Idaho 954, 957, 188 P.3d 896, 899 (2008).

The Idaho Supreme Court has held that civil rights actions brought pursuant to 42 U.S.C. § 1983 are subject to Idaho’s two-year statute of limitation for personal injury actions provided by I.C. § 5-219(4). *See Henderson v. State*, 110 Idaho 308, 311, 715 P.2d 978, 981 (1986). The date at which a § 1983 cause of action accrues is a question of federal law. *McCabe*, 145 Idaho at 957, 188 P.3d at 899. The general principle of federal law provides that accrual occurs when the plaintiff has a complete and present cause of action. *Id.* In other words, when he or she can file suit and obtain relief. *Id.* The statute of limitation begins to run when the wrongful act or omission results in damages, even though the full extent of the injury is unknown or unpredictable. *Id.*

In this case, Lightner’s complaint was filed on April 10, 2007, and alleges that his 1994 plea agreement was breached when the “additional action” of classifying him as a VSP was taken and when information was used concerning the two charges dismissed by the plea agreement. However, the complaint also alleged that “the VSP classification was added to [Lightner’s] sentence in [January] 2004, the restitution was added in 1995.” Furthermore, Lightner filed a petition for writ of habeas corpus relief on September 28, 2006, which alleged that the charges dismissed by the plea agreement were being used against him during the period of retained jurisdiction in 1994. Thus, the record establishes that the alleged injuries forming the

¹ As noted previously, this Court held that Lightner’s VSP classification was supported by substantial and undisputed evidence that Lightner represented a high risk of re-offense in the form of at least seven reported incidents or convictions involving Lightner’s sexually deviant conduct over a six-year period from 1987 to 1993. *See Lightner*, 142 Idaho at 327, 127 P.3d at 230.

basis of Lightner's claims were completed more than two years before the complaint was filed. Accordingly, the district court did not err by dismissing Lightner's claims.

Lightner contends that, even if his claims are time-barred, they can be reviewed if strict application of the statute of limitation would result in manifest injustice inconsistent with fundamental fairness. In support of his claim, Lightner cites *Murray v. Carrier*, 477 U.S. 478 (1986). However, the test that Lightner proposes is one put forth by the concurrence in that case. The section of the case to which Lightner refers specifically reflects the disagreement of the majority with the approach taken by the concurrence. Furthermore, *Murray* concerned the issue of federal habeas corpus relief from state incarceration. Its holding does not extend to civil lawsuits based on personal injuries arising from alleged civil rights violations.

Lightner also argues that his time-barred claims are preserved by the effect of the continuing tort doctrine. The Idaho Supreme Court has defined a "continuing tort" as repetitive, wrongful conduct committed over a period of time until desisted. *Curtis v. Firth*, 123 Idaho 598, 603, 850 P.2d 749, 754 (1993). In order to toll the statute of limitation, there must be a string of continual unlawful acts, not just ill effects from an original violation. *Id.* Lightner presents no argument that he has suffered from anything other than the ill effects of alleged discrete, wrongful acts. A party waives an issue on appeal if either argument or authority is lacking. *Powell v. Sellers*, 130 Idaho 122, 128, 937 P.2d 434, 440 (Ct. App. 1997). Instead, Lightner argues that the Idaho Supreme Court's holding in *Smith v. State*, 146 Idaho 822, 203 P.3d 1221 (2009), acts as an intervening change in the law regarding VSP classification procedures that affects the outcome of his case. We do not express an opinion on the merits of Lightner's contention that the holding in *Smith* affects his classification as a VSP. This argument is irrelevant in the present case. The issue before this Court is not a review of Lightner's VSP classification. Rather, the dispositive issue is whether Lightner filed his claims arising from his alleged injuries within the required two-year statute of limitation. We have concluded that he did not. The Supreme Court's holding in *Smith* does not alter this determination. Because we conclude that the district court did not err by granting summary judgment and dismissing Lightner's claims, we need not address any of Lightner's other arguments.

B. Attorney Fees

Ada County requests costs and attorney fees on appeal pursuant to I.C. § 12-117 and 12-121 as well as 42 U.S.C. § 1988(b). An award of attorney fees may be granted under I.C. § 12-

121 and I.A.R. 41 to the prevailing party and such an award is appropriate when the court is left with the abiding belief that the appeal has been brought or defended frivolously, unreasonably, or without foundation. *Rendon v. Paskett*, 126 Idaho 944, 945, 894 P.2d 775, 776 (Ct. App. 1995). Idaho Code Section 12-117 and 42 U.S.C. § 1988(b) would similarly allow for the award of reasonable costs and attorney fees to the prevailing party in this case.

After Lightner entered his guilty plea he attempted to withdraw his guilty plea pursuant to I.C.R. 33(c) arguing, among other things, that he did not know that his guilty plea would require him to register as a sex offender. Lightner's claims were found to be without merit. Subsequently, Lightner challenged his VSP classification which was affirmed by the district court and later by this Court. When Lightner was returned to custody after he absconded from parole he filed a petition for writ of habeas corpus relief seeking, among other things, a review of his VSP classification. The district court held that Lightner was precluded from re-litigating this issue. Lightner then filed the civil suit in the present case, again arguing that his VSP classification was in error, but attempting to phrase the issue instead as a personal injury action for violation of his civil rights. Subsequent to the civil complaint in this case, Lightner has filed an application for post-conviction relief seeking, among other things, reversal of his VSP classification which was dismissed as untimely. Additionally, Lightner has filed a civil rights action in federal court involving these same issues. More recently, Lightner filed another petition for writ of habeas corpus as well as an additional motion to remove violent sexual predator classification in an attempt to re-open the issue which was addressed by this Court in *Lightner*, 142 Idaho 324, 127 P.3d 227.

Much of this previous litigation involves appeals from Lightner's conviction and other post-conviction matters. In deciding the question of attorney fees, we do not consider Lightner's previous or other ongoing efforts to challenge any alleged defects in the criminal proceedings against him or his VSP classification. However, in this civil case, Lightner has taken the issue of his VSP classification and initiated a civil lawsuit against the Ada County defendants and the State of Idaho in an attempt to reverse the Board's decision. Lightner has framed his lawsuit as a § 1983 action to recover for alleged violations of his civil rights. However, his arguments reveal an attempt to collaterally attack his VSP classification and re-litigate an issue that has already been decided. Despite being time-barred, as recognized by the district court, Lightner has appealed in a continued attempt to litigate his meritless claims. We conclude that this appeal has

been brought frivolously, unreasonably, and without foundation. Therefore, we award Ada County, as the prevailing party, reasonable costs pursuant to I.A.R. 40 and attorney fees on appeal pursuant to I.C. § 12-121.

III.

CONCLUSION

Lightner's claims are barred by the two-year statute of limitation for personal injury actions brought pursuant to 42 U.S.C. § 1983. Lightner presents no valid argument for the tolling of the statute of limitation. Therefore, the district court did not err in dismissing Lightner's claims. Accordingly, the district court's order granting summary judgment and dismissing Lightner's civil rights action is affirmed. Costs and attorney fees are awarded to respondents Ada County on appeal.

Judge GUTIERREZ and Judge GRATTON, **CONCUR.**